Court appears upon pages 5 and 6 of the transcript of the record in the Circuit Court of Appeals. The opinion, not yet published, is annexed to certified copies of the record.

QUESTIONS PRESENTED FOR REVIEW.

1. The first question presented for review is whether an alien who has been in the country twenty years may be arrested and deported for conviction twenty years later of a charge of "harboring for prostitution" and sentenced to three years in prison therefor.

2. May an alien, who has committed such a crime more than five years after entering the United States, be arrested and deported at any time?

3. Does the provision in Section 19 of the Immigration Act of 1917, as follows: "That at any time within five years after entry, any alien," etc., apply to an alien who has been convicted of the crime above stated twenty years after entry?

(All three questions are intended to raise the same issue.)

4. Does Section 19 of the Immigration Act of 1917 make the crime of "harboring for prostitution" a cause for which an alien may be deported?

5. Was there sufficient evidence in the record upon which the Immigration authorities could properly find that the alien was "managing a house of prostitution"?

STATEMENT OF THE CASE.

The statement of the case as appears from the transcript of the record shows that the petitioner Alberto Costanzo came from Italy with his parents in 1907, he then being about five years of age, and went to Providence to live with his folks; that he is or was married and has two children born in the United States; that he was arrested in Providence September 29, 1925, on a charge of "harboring for prostitution." Upon a plea of nolo he was sentenced to State's Prison at Cranston, Rhode Island, for a term of three years, and actually served sixteen months and fourteen days, and was then paroled.

The evidence is somewhat equivocal, as the record shows. The petitioner sublet a house where a girl was found practicing prostitution, and stated he had nothing to do with her going down there, except that she asked him if he knew where the place was, and he gave her a ride. There is no evidence that he stayed with the girl himself.

REASONS FOR GRANTING THE PETITION.

There is practically a dissenting opinion in this case by Morton, J. We say dissenting because the Judge concurs on a single case in this Circuit, *Cafara ex rel. Filippo* v. *Tillinghast*, 31 *Fed.* (2d) 384., which is nothing more than a per curiam decision.

Judge Morton's opinion is as follows:

"MORTON, J. (concurring). I concur for the reason that the present case is covered by the decision of this court in *Cafaro ex rel. Filippo* v. *Tillinghast*, 31 Fed. (2d) 384.

As an original question this construction of the statute seems to me erroneous, and the view of it taken in *Hughes*,

Commissioner, v. *Tropello*, 296 F. R. 306, which I followed, —the Cafaro case not being called to my attention,—and somewhat elaborated in *Tillinghast* v. *DiPierro*, Fed. (2d) (1st Cir.) decided December 17, 1931, to be the correct one. There are possibilities of shocking cruelty, as the cases show, in a deportation statute having no period of limitation. There are the same humanitarian reasons for limitation of the right to deport as there are for limitation on prosecutions for crime. It seems to me that section 19 is a recognition of this fact and is intended as a general statute of limitations on deportations. The only careful analysis of the language of section 19 which has come to my attention is in *McLeod* v. *Nagle, Commissioner*, 48 Fed. (2d) 189 (C. C. A. 9), where much reliance is placed on the use of the semi-colons between the different clauses; it is thought that they operate to cut off the limiting words, "At any time within five years," with which the section begins from all but the first clause. Inasmuch, however, as the semi-colons are interposed between the different subjects of the common verb and the verb itself, their use is so unorthodox as to furnish little guide in interpreting the section. They are really used like commas, and I do not think they separate the important words with which the section begins from the verb "shall . . . be taken into custody and deported," with which the sentence concludes, nor from the intermediate clauses which do not contain their own limitation provisions, or which are not governed by the three-year limitation."

BRIEF IN SUPPORT OF THE PETITION.

Undoubtedly Congress has unlimited power and authority over aliens resident and domiciled in this country,—but did Congress intend, by the provisions of the Immigration Act of February 5, 1917, to say that an infant who came to this country as a babe in its mother's arms, after ten or twenty years in this country, or even fifty, might be taken into custody and deported upon an executive warrant for the commission of the crime involving moral turpitude?

Section 19 provides: "That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law;". The period of limitation is not enlarged until after the second semi-colon, when it is as follows: "any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials;". There Congress undoubtedly provided for deportation of aliens advocating what is known as anarchism or possibly communism, who at any time after entry should be found conducting themselves as anarchists or advocating principles and doctrines hostile to the Government of the United States or American Institutions.

The very next clause again establishes the period of limitations, as follows: "any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, *com-*

mitted within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry:". There Congress provided that an alien who had so conducted himself as to be sentenced twice to terms of imprisonment of a year or more for crimes involving moral turpitude might be arrested and deported at any time,—although that construction might be open to question, but given its widest latitude that is all that could be contended.

After the sixth semi-colon Section 19 provides that, "any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude;". If the petitioner comes under the class "as having been connected with the business of prostitution", there is no provision in the Act with regard to this class which permits the deportation *at any time* of such an alien. He must come under the general provision of Section 19, "that at any time within five years after entry", and his crime not having been committed within five years after entry he is not liable and subject to deportation within the purview of Section 19.

The next clause following the last semi-colon gets back to

three years limitation: "at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials" might be taken into custody and deported.

To cure the latter defect as to aliens who had unlawfully entered the United States, Congress enacted in the Immigration Act of 1924, Section 14, 43 Stat. at Large 153, as follows: "Any alien, who at any time after entering the United States, is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act, or regulations made thereunder, shall be taken in custody and deported in the same manner as provided for in Sections 19 and 20 of the Immigration Act of 1917."

A reading of Section 19 shows that the crime of "harboring for prostitution", upon which the alien was convicted, was not a deportable one. It was upon the conviction of this crime that the Immigration Inspector found that the alien was deportable and recommended his deportation, as appears upon page 23 of the record.

It appears upon page 21 of the record that one Richie was indicted and convicted for running the house in question and was sent to jail; that Richie pleaded guilty to operating the house. The record shows on page 28 that Richie, otherwise known as Nicola Petrucione, — although the evidence showed that he was actually the manager of the resort, yet the warrant for his arrest was cancelled. This appears in the finding of the General's Board of Review, page 28 of the record.

It appears from the record that the alien had a lease of the place, and was paying rent of thirty dollars a month, and he was collecting from Richie, alias, fifteen dollars a week. It also appears upon page 13 that at the time of the alien's ar-

rest his occupation was working in a gasoline station for his brother Gaetano at 778 Charles Street, Providence, R. I., and was receiving $17 a week.

It is difficult to see how upon this evidence the Board could find that the alien, who was merely the landlord or lessee, but not the tenant, was managing the house of prostitution conducted on the premises by Richie or Petrucione.

Undoubtedly, some of the lower Courts in construing this Act favorably to the Government, have indulged in legislation, and decisions in the lower Court are in conflict with each other because of the natural disposition of the Courts to follow the interpretation placed upon the Statute by the Executive Department. The Supreme Court is a Court of justice as well as law.

Respectfully submitted,

WILLIAM H. LEWIS.